(2)

05-4579

IN THE SUPREME COURT OF THE UNITED STATES

MONTGOMERY BLAIR SIBLEY,

Petitioner,

vs.

THE UNITED STATES SUPREME COURT,
THE ELEVENTH CIRCUIT COURT OF APPEALS,
STEVEN BREYER, RUTH BADER GINSBURG,
ANTHONY KENNEDY, SANDRA DAY O'CONNOR,
WILLIAM REHNQUIST, ANTONIN SCALIA, DAVID SOUTER,
JOHN PAUL STEVENS AND CLARENCE THOMAS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

Respondent United States Court of Appeals for the Eleventh Circuit has now held that (i) it is exempt from Congressionally-mandated disqualification, (ii) that 42 U.S.C. §1983 applies to federal actors, (iii) the federal judicial actors are immune from suits seeking declaratory relief and (iv) the District Court acted properly in dismissing Petitioner's Complaint with prejudice notwithstanding the District Court failed to consider the facts and law upon which Petition was traveling under the timely filed Amended Complaint.

Accordingly, presented for review even if *fiat justitia ruat caelum* are four questions:

WHETHER, it was improper for Respondent Eleventh Circuit to adjudicate this appeal in violation of the common law doctrine of *nemo judex in parte sua* and in violation of the express will of Congress found at 28 U.S.C. §455;

WHETHER, 42 U.S.C. §1983 extends to federal actors;

WHETHER, federal judicial actors are immune from suit for declaratory relief;

WHETHER, the District Court's dismissal with prejudice of Petitioner's Complaint in total disregard of the properly filed Amended Complaint, without permitting proper proffering of the facts and without reference to the legal authorities upon which Petitioner grounded his claims denied to Petitioner his fundamental right to *audi alteram partem.*

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Petition for Writ of Certiorari To the United States Court of Appeals For the Eleventh Circuit

Petitioner, Montgomery Blair Sibley, prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered on June 10, 2005.

Review is mandated as Respondent Eleventh Circuit has (i) entered its decision in conflict with the decision of another United States court of appeals on the same important matter; (ii) has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power, (iii) decided an important question of federal law that has not been, but should be, settled by this Court, and (iv) has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Opinions below.

The August 3, 2004, decision of the District Court denying to Petitioner leave to supply necessary information pursuant to Federal Rules of Evidence, Rule 201(d) is reprinted in the appendix hereto, *Appendix-2.*. The September 29, 2004, decision of the District Court denying leave to Petitioner for an enlargement of time and for permission to file response in excess of page limitations is reprinted in the appendix hereto, *Appendix-4*

The October 13, 2004, "Final Order of Dismissal with Prejudice" of the District Court is reprinted in the appendix hereto, *Appendix 6.*

The June 10, 2005, order of Respondent Eleventh Circuit Court of Appeals denying Petitioner's "Motion to Disqualify All

Eleventh Circuit Judges From This Matter and For Appointment of a Special Panel" is reprinted in the appendix hereto, *Appendix-10.* The July 10, 2005, decision of Respondent Eleventh Circuit Court of Appeals affirming the dismissal by the District Court is reprinted in the appendix hereto, *Appendix-12.*

The July 28, 2005, order of Respondent Eleventh Circuit Court of Appeals denying Petitioner's "Petition for Rehearing" is reprinted in the appendix hereto. *Appendix-15* The August 10, 2005, order of Respondent Eleventh Circuit Court of Appeals denying Petitioner's "Motion to Publish the June 10, 2005 decision" is reprinted in the appendix hereto, *Appendix-16.*

Jurisdiction

The jurisdiction of this Court is invoked under Article III and the Ninth Amendment to the United States Constitution and 28 U.S.C. §1254(1).

Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations Involved

U.S. Constitution, Article III, Section 1

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

U.S. Constitution, Article III, Section 2

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their

authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

U.S. Constitution, 9th Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

28 U.S.C. § 291 – Circuit judges

(a) The Chief Justice of the United States may, in the public interest, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.

28 U.S.C. § 292 – District judges

(a) The chief judge of a circuit may designate and assign one or more district judges within the circuit to sit upon the court of appeals or a division thereof whenever the business of that court so requires. Such designations or assignments shall be in conformity with the rules or orders of the court of appeals of the circuit.

...

(d) The Chief Justice of the United States may designate and assign temporarily a district judge of one circuit for service in another circuit, either in a district court or court of appeals, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

28 U.S.C. §455 – Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

...

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

...

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

...

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

...

28 U.S.C. §2071 - Rule-making power generally

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

...

28 U.S.C. §2072 -Rules of procedure and evidence: power to prescribe.

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of

no further force or effect after such rules have taken effect.

...

28 U.S.C. §2074 - Rules of procedure and evidence: submission to Congress; effective date

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

Eleventh Circuit Rule 36-2

An opinion shall be unpublished unless a majority of the panel decides to publish it. Unpublished opinions are not considered binding precedent. They may be cited as persuasive authority, provided that a copy of the unpublished opinion is attached to or incorporated within the brief, petition, motion or response in which such a citation is made.

STATEMENT OF THE CASE

The Complaint was filed on July 9, 2004, against (i) the United States Supreme Court, (ii) the Eleventh Circuit Court of Appeals, (iii) Steven Breyer, (iv) Ruth Bader Ginsburg, (v) Anthony Kennedy, (vi) Sandra Day O'Connor, (vii)William Rehnquist, (viii) Antonin Scalia, (ix) David Souter, (x) John Paul Stevens and (xi) Clarence Thomas.

The Complaint's first seven counts sought only declaratory relief against the United States Supreme Court and the Eleventh Circuit Court of Appeals that those courts had violated Petitioner's rights secured under the Constitution and Statutes by:

a. enacting and/or employing the *Rooker-Feldman* and *Younger* doctrines;

b. enacting and/or employing Rules of the United States Supreme Court - Rule 10;

c. ignoring the requirements of *Stare Decisis*; and

d. enacting and/or employing Rule 36-2 of the United States Court of Appeal for the Eleventh Circuit.

Second, the Complaint's remaining four counts sought damages personally against Steven Breyer, Ruth Bader Ginsburg, Anthony Kennedy, Sandra Day O'Connor, William Rehnquist, Antonin Scalia, David Souter, John Paul Stevens and Clarence Thomas for refusing to review Supreme Court Cases Numbered: 00-1921, 03-1205, 03-1544, 03-370, 03-682, 03-1430 filed by Petitioner, resulting in their (i) violation of the Rules Enabling Act, (ii) committing a Florida State Pendant State Law Claim for Perversion of Justice, (iii) committing negligence in discharging their constitutional obligations and (iv) committing treason for declining the exercise of jurisdiction which is given to them.

On July 19, 2004, Petitioner filed his "*Ex parte* Motion to Supply "Necessary Information" Pursuant to Federal Rules of Evidence, Rule 201(d)". That motion sought permission to (i) file approximately 1000 pages of exhibits related to the litigation in which resulted in Supreme Court docket numbers: 00-1921, 03-1205, 03-1544, 03-370, 03-682, 03-1430 in Adobe's Portable Document Format (PDF) which Rule 201(d) mandated the District Court consider and (ii) provide the District Court and opposing counsel with those documents on CD-ROM as an alternative to the expensive, bulky and difficult to access printed on papers pages. On August 3, 2005, the District Court denied Petitioner's motion as an improper *ex parte* motion. That order is reprinted in the appendix hereto. *Appendix-2*.

On September 14, 2004, the Respondents made a motion to dismiss the Complaint pointing out, *inter alia*, that Petitioner had sought relief under a non-existent statutes - 28 U.S.C. §2701, 28 U.S.C. §2702 and 28 U.S.C. §2704.

In response, on September 19, 2004, Petitioner moved for an order (i) permitting Petitioner to amend the Complaint to correct his scrivener's errors in citations to the U.S. Code, (ii) allowing Petitioner to supply the "Necessary Information" pursuant to Federal Rules of Evidence, Rule 201(d), (iii) enlarging the time for Petitioner to respond to Defendants' Motion to Dismiss; and (iv) for permission to file a response in excess of page limitations.

On September 29, 2004, the District Court entered its order denying Petitioner's motions for enlargement of time and for permission to file response in excess of page limitations. Noteworthy, the District Court ignored Petitioner's requests to supply evidence and amend the Complaint. That order is reprinted in the appendix hereto. *Appendix-4*.

In response – and as was his right – Petitioner filed on October 4, 2004, an Amended Complaint which correctly cited

the statutes at issue – 28 U.S.C. §2071, 28 U.S.C. §2072 and 28 U.S.C. §2074 ("the Rules Enabling Act") – thus addressing the primary deficiencies noted in Respondents' motion to dismiss the Complaint.

Thereafter, without further response by Respondents to the Amended Complaint and before Petitioner could file a response to the now-moot motion to dismiss the Complaint, the District Court entered its order dismissing the Complaint with prejudice – but significantly not the Amended Complaint – on October 13, 2004. A copy of that order is reprinted in the appendix hereto, *Appendix-6*. In that order, the District Court found that (i) "the Plaintiff is barred from seeking monetary damages from Defendants" upon the doctrine of judicial immunity and (ii) "the Federal Courts Improvement Act ("FCIA") which amended §1983 . . . legislatively reverse[d] *Pulliam* and limit[ed] the injunctive relief available against officers. . .Since the Defendants have not violated a declaratory decree, judicial immunity applies to the instant action." *Appendix-8*.

A timely notice of appeal was filed on October 18, 2004.

Petitioner then timely moved Respondent Eleventh Circuit to disqualify itself as Respondent Eleventh Circuit was a defendant in this suit. On June 10, 2005, Respondent Eleventh Circuit entered its order denying Petitioner's "Motion to Disqualify All Eleventh Circuit Judges From This Matter and For Appointment of a Special Panel" invoking the *Rule of Necessity* to justify its decision. A copy of that order is reprinted in the appendix hereto. *Appendix-10*.

Additionally, on June 10, 2005, Respondent Eleventh Circuit entered its "Do Not Publish" decision affirming the District Court's dismissal with prejudice. A copy of that order is reprinted in the appendix hereto, *Appendix-12*. In that decision, Respondent Eleventh Circuit held (i) "Supreme Court justices are acting within their jurisdiction when they choose to deny writs

of certiorari" and (ii) "42 U.S.C. §1983. . . limits [Petitioner]'s injunctive remedy to declaratory relief. In *Bolin*, we held that a similar plaintiff was not eligible for declaratory relief because he had an adequate remedy at law – namely, the right to appeal to the Circuit Court of Appeals and to petition the Supreme Court for certiorari. *Bolin*, 255 F.3d at 1243. [Petitioner] enjoyed a similar remedy at law, and thus his claim for injunctive relief must also fail."

In response, Petitioner timely filed his motion for rehearing noting, among other matters, (i) that Respondent Eleventh Circuit's refusal to recuse itself conflicted with the Ninth Circuit's holding on the identical issue in *Schmier v. US. Ct. of Appeals*, 279 F.3d 817 (9th Cir. 2002), (ii) that Petitioner did not seek injunctive relief in the Complaint or Amended Complaint, (iii) that Petitioner was not proceeding – nor could he – against federal actor defendants under 42 U.S.C. §1983, (iii) that the panel failed to address the issue of the District Court's ignoring of the properly and timely filed Amended Complaint and (iv) judicial immunity does not apply to actions for declaratory relief under *Pulliam v. Allen*, 466 U.S. 522, 541-42 (1984). Additionally, Petitioner timely moved for an order to publish the "Do Not Publish" June 10, 2005, decision under Eleventh Circuit Rule 36-2.

In response, on July 28, 2005, Respondent Eleventh Circuit entered its one sentence order denying Petitioner's motion for rehearing. A copy of that order is reprinted in the appendix hereto, *Appendix-15*. Similarly, on August 10, 2005, Respondent Eleventh Circuit denied Petitioner's motion to publish the decision in a one sentence order. A copy of that order is reprinted in the appendix hereto. *Appendix-16*.

Reasons for Granting the Writ

There are four compelling reasons for granting the writ to review the decision of the United States Court of Appeals for the Eleventh Circuit.

First, it was improper for Respondent Eleventh Circuit to adjudicate this appeal in violation of the common law doctrine of *nemo judex in parte sua* and in violation of the express will of Congress found at 28 U.S.C. §455.

Second, Respondent Eleventh Circuit has now extended 42 U.S.C. §1983 to federal actors ignoring this Court's holdings to the contrary.

Third, Respondent Eleventh Circuit has also held that federal judicial actors are immune from suit for declaratory relief contrary to this Court's express holdings.

Last, the District Court's dismissal with prejudice of Petitioner's Complaint in disregard of the timely and properly filed Amended Complaint, without permitting proper proffering of the facts and without reference to the legal authorities upon which Petitioner grounded his claims so far departed from the accepted and usual course of judicial proceedings as to call for this Court's supervisory power if the integrity of the judicial branch is to be maintained.

I. The Eleventh Circuit Was Required to Recuse Itself From Considering Petitioner's Appeal

The Fifth, Sixth and Seventh Counts of both the Complaint and Amended Complaint sought declaratory relief against Respondent Eleventh Circuit for (i) ignoring its obligations under the doctrine of *stare decisis* by issuing its opinions "Do Not Publish", (ii) by improperly employing the *Rooker-Feldman* doctrine and (iii) by improperly employing the *Younger*

doctrine.

As such, disqualification of the sitting judges of Respondent Eleventh Circuit from hearing the appeal was mandatory under three theories.

First, disqualification of judges is mandated under the doctrine of *nemo judex in parte sua* made applicable to federal judges under the Ninth Amendment. Along with the doctrine of *audi alteram partem*, these principles of natural justice were derived from the Romans who believed that some legal principles were "natural" or self-evident and did not require a statutory basis. As such, they are indelibly imbedded in the common law and may not be disparaged by Constitutional actors without doing violence to the protections provided by the Ninth Amendment.

Second, Respondent Eleventh Circuit's disqualification is mandated by Congress under 28 U.S.C. §455(b)(5)(i) - "Disqualification of justice, judge, or magistrate judge." That section requires that a judge shall disqualify himself when: "He . . . is a party to the proceeding, or an officer, director, or trustee of a party."

Here, each of the judges of Respondent Eleventh Circuit Court of Appeals – while not technically an "officer, director or trustee" of Respondent Eleventh Circuit – certainly sits in a similar relationship to Respondent Eleventh Circuit and as such is automatically disqualified from consideration of this appeal.

Third, pursuant to §455(a) "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Here, it is reasonable to question whether any of the judges of Respondent Eleventh Circuit can be impartial when a declaratory decree is sought challenging the rules and practices of Respondent Eleventh Circuit which they have formulated and

followed.

Finally – and significantly – in an identical situation, the Ninth Circuit determined it was mandatory to disqualify themselves and seek appointment of judges from outside the Ninth Circuit to sit as a special panel by designation. In *Schmier v. U.S. Ct. of Appeals*, 279 F.3d 817, footnote #1 (9th Cir. 2002), the appellant alleged that the Ninth Circuit Rules prohibiting citation to unpublished opinions violated his constitutional rights. Before determination of that issue – the same as raised by Petitioner in the Fifth Claim of the Amended Complaint – the Ninth Circuit determined it was required to disqualify itself and have appointed a special panel pursuant presumably to 28 U.S.C. §43.

Rather than addressing these issues, Respondent Eleventh Circuit concluded that "the rule of necessity permits the judges of this Court to hear this appeal. *See In re BellSouth Corp.*, 334 F.3d 941,956 at n. 7 (11th Cir. 2003); *Bolin v. Story*, 225 F.3d 1234, 1238-1239 (11th Cir. 2000); *Switzer v. Bey*, 198 F.3d 1255, 1258 (10th Cir. 2000); *Tavia-Ortiz v. Winter*, 185 F.3d 8, 10 (2nd Cir. 1999)." *Appendix-11.*

In *In Re BellSouth Corp.* Respondent Eleventh Circuit held:

> We have also held that, even where recusal would otherwise be statutorily mandated, a judge may sit under the "rule of necessity" if no other judge in the circuit is reasonably available to hear the case.

Id. at 956, footnote #7. This disregard of the Congressionally mandated scheme of disqualification by Respondent Eleventh Circuit exceeds the limited jurisdiction to determine matters granted to this inferior court by Congress.

Moreover, *Bolin v. Story* cited to *United States v. Will*, 449 U.S. 200, 213 (1980) for the proposition that "There is an

exception to this rule, however, in cases where "the case cannot be heard otherwise." *Bolin* at 1238.

In *United States v. Will*, this Court held: " We therefore hold that §455 was not intended by Congress to alter the time-honored Rule of Necessity. And we would not casually infer that the Legislative and Executive Branches sought by the enactment of §455 to foreclose federal courts from exercising "the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 1 *Cranch* 137, 177, 2 L.Ed. 60 (1803)." *Id.* at 217. Note, that in *Will*, the issue of disqualification extended to "the District Judge and all Justices of this Court" as they all had "an interest in the outcome of these cases." *Id.* at 210.

Contrariwise, this instant suit is only of interest to the judges of Respondent Eleventh Circuit (and this Court), not the remainder of the judges of the other federal circuit court of appeal and the numerous District Court judges – any three of whom could have been appointed to hear Petitioner's appeal under 28 U.S.C. § 291(a) or §292(d). Hence, the "Rule of Necessity" cited by Respondent Eleventh Circuit is inapposite and in clear derogation of the intent of Congress expressed in these statutes.

Indeed, in *Will*, this Court stated: "However, in the highly unusual setting of these cases, even with the authority to assign other federal judges to sit temporarily under 28 U.S.C. §§291-296 (1976 ed. and Supp. III), it is not possible to convene a division of the Court of Appeals with judges who are not subject to the disqualification provisions of §455. It was precisely considerations of this kind that gave rise to the *Rule of Necessity*, a well-settled principle at common law that, as Pollack put it, "although a judge had better not, if it can be avoided, take part in the decision of a case in which he has any personal interest, yet he not only may but must do so if the case cannot be heard otherwise." F. Pollack, *A First Book of*

Jurisprudence 270 (6th ed. 1929).

Here, Congress has provided at 28 U.S.C. §§291-296 for the assignment of other judges in conflict cases such as these. As such, Respondent Eleventh Circuit was required to disqualify themselves from considering Petitioner's appeal.

II. §1983 Does Not Apply to Federal Agents

Respondent Eleventh Circuit – in direct conflict with a relevant decision of this Court – held that "Furthermore, §1983 has been applied to federal actors under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971)." *Appendix-14*.

Clearly, in *Bivens*, §1983 was not "applied to federal agents". Justice Harlan, concurring in the judgment, noted "Petitioner also asserted federal jurisdiction under 42 U.S.C. §1983 and 28 U.S.C. §1343(3), and 28 U.S.C. §1343(4). Neither will support federal jurisdiction over the claim." *Bivens*, at 398, footnote # 1.

Hence, Respondent Eleventh Circuit's subsequent conclusion that §1983 "thus limits [Petitioner]'s injunctive remedy to declaratory relief" is a *non sequitur*. *Appendix-14*. Moreover Petitioner was <u>not</u> seeking injunctive relief in the Amended Complaint in all events.

Thus, Respondent Eleventh Circuit's conclusion that Petitioner "was not eligible for declaratory relief because he had an adequate remedy at law – namely, the right to appeal to the Circuit Court of Appeals and to petition the Supreme Court for certiorari . . . and thus his claim for injunctive relief must fail" is simply inane. *Appendix-14*. Petitioner could <u>not</u> raise his declaratory relief claims against Respondents Supreme Court and Respondent Eleventh Circuit in any other action but a declaratory action as these Respondents have refused to address

these claims when previously presented to them as he has no other forum available.

Accordingly, under the doctrine of *audi alteram partem*, Petitioner cannot be denied a forum to raise the claims presented in the Amended Complaint.

III. Federal Judicial Actors Are Not Immune To Suit For Declaratory Relief

The upshot of Respondent Eleventh Circuit's holding is that federal judicial actors are immune from suit for declaratory relief. Such a holding cannot be allowed to stand without doing violence to the Congressional declaratory judgement scheme found at 28 U.S.C. §2201 and §2202.

At §2201 "Creation of remedy" Congress imbued the federal courts with jurisdiction to declare legal rights. §2201(a) states "In a case of actual controversy within its jurisdiction. . . . **any court of the United States**, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

Here, Respondent Eleventh Circuit has trespassed upon that jurisdiction to the end that federal judicial actors are exempt from §2201(a)'s reach as any claim against them could have been raised on appeal. However, when on appeal – as here – that claim is repeatedly ignored, the end effect is to deny Petitioner the right to challenge the policy and procedure of the courts through the mechanism of §2201(a).

Indeed, in *Pulliam v. Allen*, 466 U.S. 522, 540-541 (1983), this Court held "As illustrated above, there is little support in the common law for a rule of judicial immunity that prevents

injunctive relief against a judge. . . .We conclude that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity." Clearly then, if injunctive relief would be available, the less intrusive declaratory relief would also be available.

In so much as Respondent Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power and decided an important question of federal law that has not been, but should be, settled by this Court, certiorari must be granted.

IV. THE DISTRICT COURT DENIED TO PETITIONER *AUDI ALTERAM PARTEM*

As the District Court docket sheet clearly establishes, the District Court dismissed the Complaint without reference to the pending Amended Complaint. As such, the dismissal with prejudice was error requiring this Court's review as the District Court has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Court's supervisory power.

Plainly, on October 4, 2004, Appellant was authorized to file the Amended Complaint as no "responsive pleading" to the Complaint had been filed by Respondents. Federal Rules of Civil Procedure, Rule 15(a) "Amended and supplemental Pleadings" states "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." Here, Respondents only served a motion to dismiss – not a responsive pleadings. "Because the appellees had only filed a motion to dismiss, not a responsive pleading, the appellants were entitled to amend their complaint at least once as a matter of course at any time before a responsive pleading was served." *Fortner v. Thomas*, 983 F.2d 1024, 1032, (C.A.11 (Ga.) 1993).

Even assuming that the District Court could ignore the properly filed Amended Complaint, the District Court refused to acknowledge its statutory obligation to consider the facts incorporated by reference in both the Complaint and Amended Complaint. By doing so, the District Court did not have the full set of factual allegations before it when it entered its dismissal with prejudice.

Federal Rules of Evidence, Rule 201(d) states, "When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information." Here, in paragraphs 9 and 10 of both the Complaint and Amended Complaint, Petitioner "requested" the District Court to take "judicial notice" of the pleadings and decisions in the Twenty-Eight (28) Florida state and Six (6) Federal actions and sought twice for permission to supply the District Court with that information in Adobe PDF format on CD-ROM media due to the voluminous nature of that information.

The District Court's dismissal with prejudice came before that information was supplied to the District Court. In so much as Federal Rules of Evidence, Rule 201(f) states "**Judicial notice may be taken at any stage of the proceeding**". Petitioner's request was timely and thus the District Court's obligation to accept those facts was mandatory.

Along with the improper refusal by the District Court to permit Petitioner to supply it with the facts in support of the allegations in the Amended Complaint, the District Court was unaware of the legal grounds upon which Petitioner was traveling.

In the Complaint, Petitioner transposed the numbers to cite as legal grounds for the relief requested a federal statute that didn't exist. It was only in the Amended Complaint that Petitioner correctly cited the correct statutory basis for the relief sought – the Rules Enabling Act found at 28 U.S.C. §2071, 28

U.S.C. §2072 and 28 U.S.C. §2074. As neither the District Court nor Respondent Eleventh Circuit considered the implications of the Rules Enabling Act upon the factual issues raised – and those precluded from being raised – Petitioner's claims have now been dismissed with prejudice in violation of this Court's injunction in *Conley v. Gibson*, 355 U.S. 41 (1957).

In *Conley v. Gibson*, this Court held "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be *decisive* to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Id.* at 47.

Here, Petitioner's admitted dyslexia in transposing the numerical digits of the Rules Enabling Act should not be the determining factor in his suit which challenges the basic procedures of a federal court system which has consistently been committing judicial treason by failing to address issues properly presented to it.[1]

Petitioner is not as alone in making this claim as the reader's initial visceral reaction would drive the reader to jump to conclude. In *Cohens v. Virginia*, 19 U.S. 264, 6 Wheat. 264, 404 (1821), Chief Justice Marshall stated:

> It is most true that [the United States Supreme Court]

[1] Indeed, this Court recently recognized this trend when it held that "Variously interpreted in the lower courts, the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U. S. C. §1738. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 033005 FEDSC, 03 1696 (March 30, 2005) (Emphasis added).

> will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. **We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution.** (Emphasis added).

Indeed, as the court noted in *Schmier*, "Given the wide range of interest shown in the debate about unpublished opinions, and assuming that parties with personal stakes in live controversies will properly raise the issue with the federal courts, we think it is only a matter of time before the theoretical questions raised by Schmier's complaint are all properly presented and resolved." *Id.* at 825.

Accordingly, this Court must issue its writ of certiorari to review the actions of the District Court in dismissing the complaint with prejudice when it had neither considered the proffered facts nor the law upon which the action traveled as (i) the District Court has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power, and (ii) has decided an important federal question in a way that conflicts with relevant decisions of this Court.

CONCLUSION

This Court must review the decision of the United States Court of Appeals for Respondent Eleventh Circuit in this matter if the fundamental rights of *audi alteram partem* and *nemo judex in parte sua* are to be preserved even if the result is that *fiat justitia ruat caelum.*

Respectfully submitted,

Montgomery Blair Sibley
Counsel for Petitioner

(2)
Supreme Court, U.S.
FILED
05-459 OCT 11 2005
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

MONTGOMERY BLAIR SIBLEY,

Petitioner,

vs.

THE UNITED STATES SUPREME COURT,
THE ELEVENTH CIRCUIT COURT OF APPEALS,
STEVEN BREYER, RUTH BADER GINSBURG,
ANTHONY KENNEDY, SANDRA DAY O'CONNOR,
WILLIAM REHNQUIST, ANTONIN SCALIA, DAVID SOUTER,
JOHN PAUL STEVENS AND CLARENCE THOMAS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

Appendix to Petition for Writ of Certiorari

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 04-21698-CIV-KING

MONTGOMERY BLAIR SIBLEY,

Plaintiff,

v.

UNITED STATES SUPREME COURT,
et al.,

Defendants.
_____/

ORDER DENYING PLAINTIFF'S *EX PARTE* MOTION TO SUPPLY "NECESSARY INFORMATION"

THIS CAUSE is before the Court upon Plaintiff's Ex Parte Motion to Supply "Necessary Information" Pursuant to Federal Rule of Evidence 201(d), filed July 19,2004. Pursuant to Local Rule 5(a), this Court does not permit ex parte motions; every motion must be served upon all parties.

Accordingly, after a careful review of the record and the Court being otherwise fully advised, it is

ORDERED and ADJUDGED that Plaintiffs Ex Parte Motion to Supply "Necessary Information" Pursuant to Federal Rule of Evidence 201(d) be, and same is hereby DENIED.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 3rd day of August, 2004.

James Lawrence King
U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 04-21698-CIV-KING

MONTGOMERY BLAIR SIBLEY,

Plaintiff,

v.

UNITED STATES SUPREME COURT, et al.,

Defendants.
_____/

ORDER DENYING PLAINTIFF'S MOTIONS FOR ENLARGEMENT OF TIME AND FOR PERMISSION TO FILE RESPONSE IN EXCESS OF PAGE LIMITATIONS

THIS CAUSE is before the Court upon Plaintiff's Motions for Enlargement of Time to Respond to Defendants's Motion to Dismiss, and for Permission to File a Response in Excess of Page Limitations, filed September 17, 2004.

Accordingly, after a careful review of the record and the Court being otherwise fully advised,

ORDERED and ADJUDGED that Plaintiffs Motion for Enlargement of Time to Respond to Defendant's Motion to Dismiss be, and same is hereby DENIED. It is further

ORDERED and ADJUDGED that Plaintiffs Motion for Permission to File a Response in Excess of Page Limitations be, and is hereby DENIED.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 29th day of September, 2004.

James Lawrence King
U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 04-21698-CIV-KING

MONTGOMERY BLAIR SIBLEY,

Plaintiff,

v.

UNITED STATES SUPREME COURT, et al.,

Defendants.
_____/

FINAL ORDER OF DISMISSAL WITH PREJUDICE

THIS CAUSE is before the Court upon Defendants' Motion to Dismiss Plaintiff's Complaint, filed September 14, 2004.

Background

Plaintiff, an attorney, has filed this lawsuit *pro se*, against the following Defendants: United States Supreme Court, the Justices in their individual capacity, and the Eleventh Circuit Court of Appeals. Plaintiff is seeking monetary damages and Declaratory relief, claiming that he has been damaged by Defendants based on alleged denial of Plaintiff's federal authorized right to access to court to seek redress for violations of his federal constitutional, common law and statutory rights. Over the past four years, Plaintiff has filed approximately thirty five (35) state and federal actions relating to a domestic relations/child custody dispute. Ten (10) of these actions have previously been dismissed in the Southern District of Florida and

consist of similar allegations that are now before this Court. In its current Motion to Dismiss, Defendants argue that Plaintiff's claims should be dismissed because (1) Defendants's are entitled to absolute judicial immunity, (2) counts in the Complaint do not constitute a justiciable claim, and (3) Plaintiff failed to state a claim upon which relief can be granted.

Standard of Review

A motion to dismiss will be granted only when it is clear that no set of facts consistent with the allegations could provide a basis for relief. "It is well established that a complaint should not be dismissed for failure to state a claim pursuant to Fed.R. Civ. Pro. 12(b)(6) 'unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief'" *Bradberr;y v. Pinellas County*, 789 F.2d 1513,1515 (11th Cir. 1986) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). For purposes of a motion to dismiss a court must construe the complaint in the light most favorable to the plaintiff and accept as true all facts alleged by the plaintiff. *Hishon v. King & Spaulding*, 467 U.S. 69,73 (1984). The issue is not whether the plaintiff will ultimately prevail, but "whether the claimant is entitled to offer evidence to support the claims." 805 F2d 962, 965 (11th Cir. 1986) (citation omitted).

Discussion

I. Plaintiff's Claim for Monetary Damages

It is well established that generally a judge is absolutely immune from suit for money damages. *Mireless v Waco*, 502 U.S. 9 (1991)(*per curiam*). This immunity is from suit, and not just from an award of monetary damages. *Id.* At 11. The purpose of judicial immunity is to protect the public "whose interest it is that the judges should at liberty to exercise their functions with independence and without fear of consequences." *Pierson v. Ray*, 386 U.S. 547, 554 (1967). Any error made by a

judge may be corrected on appeal, but a judge "should not have to fear that unsatisfied litigant may hound him with litigation charging malice or corruption . . ." *Id.*

There are only two exceptions to the doctrine of judicial immunity. *Mireless*, 502 U.S. at 11. The first exception is when the activity in question is "non-judicial". *Id.* Whether an act is "judicial" relates to the nature of the act itself and to the parties' exceptions, i.e., whether the act is a function normally performed by a judge and whether the parties dealt with the judge in his judicial capacity. *Id.* at 12. The second exception is when the activity, though judicial in nature, is taken in the complete absence of all jurisdiction. *Id.* The scope of jurisdiction must be construed broadly where the issue is immunity of a judge. *Stump v. Sparkman*, 435 U.S. 349, 356 (1978). As such, the Plaintiff is barred from seeking monetary damages from Defendants in the instant action.

2. **Plaintiff's Claim for Declaratory Relief**

In the past, Plaintiffs were permitted to seek prospective declaratory or injunctive relief against judges under 42 U.S.C. §1983. *Pulliam v. Allen*, 466 U.S. 522, 421-452 (1984). However, in 1996 Congress passed the Federal Courts Improvement Act ("FCIA") which amended §1983 to state that ". . . in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. §1983. The effect of the FCIA was to legislatively reverse *Pulliam* and limit the injunctive relief available against officers. *Bolin v. Story*, 225 F3d 1234, 1242 (11th Cir. 2000). Since the Defendants have not violated a declaratory decree, judicial immunity applies to the instant action.

Conclusion

Plaintiff's Complaint fails to state a claim in which relief can be granted based on the fact that the Supreme Court and the Eleventh Circuit are absolutely immune from liability based on the claims before this Court. Plaintiff cannot sustain an action, alleging constitutional violations simply because the Plaintiff disagrees with the court's decision. It is apparent that Plaintiff can plead no set of facts in support of his claim that would entitle him to relief. The Court finds that Defendants are entitled to absolute immunity and dismisses Plaintiff's Complaint on this basis.

Accordingly, after a careful review of the record and the Court being otherwise fully advised, it is

ORDERED and ADJUDGED that Defendants' Motion to Dismiss be, and the same is hereby DISMISSED with prejudice.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 13th day of October, 2004.

James Lawrence King
U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

D. C. Docket No. 04-21698-CV-JLK
NO. 04- 15501
Non-Argument Calendar
June 10, 2005

MONTGOMERY BLAIR SIBLEY,

Plaintiff-Appellant,

versus

UNITED STATES SUPREME COURT,
ELEVENTH CIRCUIT COURT OF APPEAL,
STEVEN G. BREYER, RUTH BADER GINSBURG,
ANTHONY KENNEDY, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

BEFORE: TJOFLAT, DUBINA and KRAVITCH, Circuit Judges.

BY THE COURT:

Now before the Court is Appellant's "Motion to Disqualify...," pursuant to 28 U.S.C. §455(a) and 28 U.S.C. §455(b)(5)(i), asking that the entire Court be recused and that a special panel of judges from outside the circuit be appointed to hear this appeal.

The motion for disqualification is DENIED as to each of

the members of this panel and DENIED AS MOOT as to the remaining judges of this Court. Assuming without deciding that either §455(a) or §455(b)(5)(i) would otherwise dictate our recusal, the rule of necessity permits the judges of this Court to hear this appeal. *See In re BellSouth Corp.*, 334 F.3d 941,956 at n. 7 (11th Cir. 2003); *Bolin v. Story*, 225 F.3d 1234, 1238-1239 (11th Cir. 2000); *Switzer v. Bey*, 198 F.3d 1255, 1258 (10th Cir. 2000); *Tavia-Ortiz v. Winter*, 185 F.3d 8, 10 (2nd Cir. 1999).

The motion to constitute a special panel is DENIED AS MOOT.